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RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

KELLOGG v. JOHNSON.

An order of a Court of Probate directing the estate of an intestate to be distributed to the persons whom such court finds to be the heirs at law and entitled to the estate is conclusive, and furnishes full protection to the administrator until set aside on appeal.

DEBT on a probate bond; tried on the general issue closed to the court and reserved on facts found for advice.

On the 7th of October, 1867, the defendant, Solon B. Johnson, was duly appointed administrator on the estate of Sophronia J. Urmston, by the plaintiff as judge of the Court of Probate for the district of Cornwall, and gave the usual bond as such administrator. On the 7th of April, 1868, Johnson presented his administration account to the Court of Probate for settlement, which account showed a balance of \$978.93 remaining in his hands for distribution, and was accepted and allowed by the court.

In pursuance of the verbal order of the court, the administrator divided said sum of \$978.93 equally between Seymour Johnson and Lewis P. Johnson, they being the brothers of the deceased, and there being no other brothers or sisters of the deceased nor representatives of them, and took their receipt therefor, which receipt was recorded on the records of said Court of Probate, but no order of distribution was made by the court, and although the receipt was accepted by the court in full settlement of the estate, yet by inadvertence and mistake of the administrator no record of such acceptance was made. On the 28th of December, 1869, on application of the administrator, the Court of Probate made a formal order that said sum of \$978.93, remaining in the hands of the administrator for distribution, be equally divided between Seymour Johnson and Lewis P. Johnson, they being the brothers of the deceased and her next of kin, and by the laws of the State of Connecticut entitled to said money; which order was duly recorded.

The intestate was lawfully married to Nathaniel M. Urm-

ston on the 9th of April, 1857, and continued to be his lawful wife down to and at the time of her death, which was on the 31st of August, 1867; she left no children, or legal representatives of children, no sisters, or representatives of sisters, and but two brothers of the whole blood, Seymour Johnson and Lewis P. Johnson, both of Cornwall.

The deceased passed several years of her married life in the States of Iowa and Missouri. In the month of May 1863, she removed with her husband from Missouri to Hillsborough, Ohio, where she continued to reside, and where she had her domicile at the time of her death. At her decease she left personal property only, which at the time of her death was in the hands of persons within the probate district of Cornwall, and had never been reduced into actual possession by her husband.

By the law of Ohio, the goods, chattels, or other personal estate of a wife dying intestate, leaving no children, and no legal representatives of any children, vest in the husband.

The plaintiff claimed that the judgment of the court should be for the plaintiff to recover the amount remaining in the hands of the administrator, after paying the charges against the estate, and that said sum belonged of right to Nathaniel M. Urmston, for whose benefit this suit was brought. The defendants claimed that said sum had already been paid by the administrator to the two brothers of the deceased, to whom it rightfully belonged.

Upon these facts the question, what judgment should be rendered, was reserved for advice.

A. S. Treat, for the plaintiff.

G. C. Woodruff, for the defendants.

PARK, J.—It appears in this case that the administrator, on the 7th day of April, 1868, in pursuance of a verbal order of the Court of Probate, which was perfected and made a formal order on the 28th day of December, 1869, made distribution of the estate in question to the persons that the Court of Probate found were the heirs at law of the deceased, and entitled to receive the same. This order of the Court of Probate has never been reversed, but it now remains in full

force, and we think it furnishes full protection to the administrator, and a conclusive answer to this suit on the probate bond, until it shall be regularly set aside on appeal taken from the order to the Supreme Court. We think this view of the case is fully sustained by the following cases: *Davenport v. Richards*, 16 Conn. 310; *Gates v. Treat*, 17 id. 388; *Bissel v. Bissel*, 24 id. 241.

We advise a judgment in favor of the defendants.

We publish the foregoing case, not so much because it contains any new principle in the law affecting the settlement of estates, but more because it is the distinct reiteration of a very important rule upon that subject, and one that it seems not easy for the professional always to bear in mind. So much of the litigation of the country is conducted in the common law courts, that we are apt to think, on first blush, that all questions may be tried there, unless exclusively belonging to equity jurisdiction, and not always sufficiently to bear in mind the importance and extent of the probate jurisdiction which extends to all the personal property in the country and more especially that it is an *exclusive* jurisdiction.

It would be unfortunate if it were not so, since otherwise such merito-

rious officers as executors and administrators could obtain no effectual quietus against actions at any time within the term of the statute of limitations. We need add no authority to confirm the decision of the court in this case. But they will be found collected in 3 Redf. Wills, 94 *et seq.*, 266 *et seq.* And we may also refer to some cases in Connecticut bearing on the same general question: *Prash v. Button*, 316 Conn. 292; *Fairman's Appeal*, 30 id. 205. There is no rule of law better settled than that the Probate Courts have the exclusive primary jurisdiction over all questions pertaining to the settlement of estates, and that the final decree of such courts, unappealed from, is conclusive of the rights of all parties interested, in all other courts.

I. F. R.

Supreme Court of Errors of Connecticut.

CARLOS HOLCOMB AND OTHERS v. ANSON B. TIFFANY.

The plaintiffs were selected as arbitrators between them by T and S and in discharging the duties of their appointment incurred certain expenses for the hire of a clerk. In their award the arbitrators awarded that T should pay them a certain sum for their fees and expenses.

In assumpsit against T to recover the sum so awarded, brought by the arbitrators jointly, in which the declaration contained a special count on the award and the common counts for money paid and work and labor done, it was held that the plaintiffs were entitled to recover on the common counts, and that the fact that another was jointly liable with the defendant was no defense under the general issue, but could be taken advantage of only by plea in abatement. Whether a recovery could be had on the special count, *quære*.